

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of the Verizon New England for	)	
Forbearance Pursuant to 47 U.S.C. § 160 in	)	WC Docket No. 08-24
Rhode Island	)	
	)	

**REPLY TO VERIZON'S OPPOSITION TO MOTION TO DISMISS OR, IN THE  
ALTERNATIVE, DENY PETITION FOR FORBEARANCE**

The undersigned signatories (hereinafter referred to jointly as "Movants"), through counsel, file this Reply in response to Verizon New England's ("Verizon") Opposition to Motion to Dismiss or, in the Alternative, Deny Petition for Forbearance ("Verizon Opposition").<sup>1</sup> Despite Verizon's claims that its petition for forbearance in Rhode Island<sup>2</sup> is somehow different from its previous petition for forbearance in the Providence MSA<sup>3</sup> and

<sup>1</sup> Motion to Dismiss or, in the Alternative, Deny Petition for Forbearance, WC Docket No. 08-24 (filed Mar. 17, 2008) ("Motion").

<sup>2</sup> *Petition of Verizon New England for Forbearance Pursuant to 47 U.S.C. §160 in Rhode Island*, WC Docket No. 08-24 (filed Feb. 14, 2008) ("*Rhode Island Petition*").

<sup>3</sup> *Petition of Verizon New England for Forbearance Pursuant to 47 U.S.C. §160 in the Providence Metropolitan Statistical Area*, WC Docket No. 06-172 (filed Sept. 6, 2006) ("*Providence MSA Petition*"). The State of Rhode Island constitutes a subset of the Providence MSA and thus was included in the Providence MSA forbearance proceeding. The Providence MSA Petition was one of six petitions for forbearance filed by Verizon. See *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Boston Metropolitan Statistical Area*; *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the New York Metropolitan Statistical Area*; *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Philadelphia Metropolitan Statistical Area*; *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Pittsburgh Metropolitan Statistical Area*; *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Providence Metropolitan Statistical Area*; *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Virginia Beach Metropolitan Statistical Area*, WC Docket No. 06-172 (filed Sept. 6, 2006) ("*Verizon 6-MSA Forbearance Petitions*").

justifies a grant of forbearance, the fact remains that there is no material difference between the instant petition and the previous Providence MSA petition. The instant petition therefore should be summarily dismissed or denied.

Verizon makes several claims in its Opposition that purportedly distinguish the “new” Rhode Island petition from its prior Providence MSA petition, which was denied in all respects by the Commission in December 2007.<sup>4</sup> However, Movants assert – and various commenters agree – that even a cursory examination of Verizon’s claims reveals that there is no material difference between the Rhode Island and Providence MSA petitions.<sup>5</sup> Consequently, the Rhode Island petition should be dismissed or denied.

**I. VERIZON’S CONTENTION THAT THE COMMISSION ESTABLISHED A NEW “BRIGHT-LINE” FORBEARANCE TEST IN THE 6-MSA ORDER IS CLEARLY INCORRECT**

Verizon alleges that its Rhode Island petition differs from the Providence MSA petition because the Rhode Island petition responds to what Verizon claims – albeit incorrectly – is a new “bright-line test” established in the *6-MSA Order*.<sup>6</sup> Specifically, Verizon contends that in that order the Commission established a new forbearance standard “which looks at competitors’ share of residential lines, to determine whether forbearance is warranted.”<sup>7</sup>

---

<sup>4</sup> *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, Memorandum opinion and Order, 22 FCC Rcd 21293 (2007) (“*6-MSA Order*”).

<sup>5</sup> Comments of COMPTTEL in Support of Motion to Dismiss, at 1-2 (filed Apr. 7, 2008); Comments of Cox Communications, Inc., at 2 (filed Apr. 7, 2008); Comments of Sprint Nextel Corporation’s Comments in Support of the Motion to Dismiss or, in the Alternative, Deny Verizon New England’s Petition for Forbearance in Rhode Island, at 2 (filed Apr. 7, 2008).

<sup>6</sup> *Rhode Island Petition*, at 2, 6.

<sup>7</sup> *Id.*, at 2.

Verizon's mischaracterizations aside, the fact is that the Commission's consideration of competitors' market share is neither new nor a bright-line test but in fact has been an essential component of the broader analysis performed by the Commission in every Section 251 (c)(3) forbearance proceeding since the *Omaha Forbearance Order*.<sup>8</sup> Indeed, Verizon's claims of a "new bright-line" test are directly contradicted by statements in the *6-MSA Order* – the very order in which the Commission denied Verizon's request for forbearance in the Providence MSA – referencing the evaluation of market penetration in previous forbearance proceedings. Specifically, the Commission stated:

In particular, Verizon's market shares in the MSAs at issue, measured consistent with our approach in the Qwest Omaha Forbearance Order and ACS Dominance Forbearance Order, are sufficiently high to suggest that competition in these MSAs is not adequate to ensure that the "charges, practices, classifications, or regulations . . . for [] or in connection with that . . . telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory" absent the regulations at issue.<sup>9</sup>

The Commission also explicitly stated that market share is not the sole factor in determining whether forbearance should be granted:

[T]he Commission repeatedly has recognized, when determining whether a carrier has market power in conducting a dominance analysis, the Commission *does not limit itself to market share alone*, but also looks to other factors including supply substitutability, elasticity of demand, and firm cost, size, and resources.<sup>10</sup>

Consequently, Verizon's claims that its Rhode Island petition is somehow different because it addresses a brand new forbearance test are baseless. Because the instant

---

<sup>8</sup> See, e.g., *In re Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Omaha Metropolitan Statistical Area*, 20 FCC Rcd 19415 (2005) ("Omaha Forbearance Order").

<sup>9</sup> *6-MSA Order*, at ¶ 27 (emphasis added).

<sup>10</sup> *Id.*, at ¶ 28. (emphasis added).

Rhode Island petition is a mere repackaging – without material change – of the Providence MSA petition which was recently denied by the Commission, the Rhode Island petition should be rejected.<sup>11</sup>

## **II. VERIZON’S FOCUS ON A SMALLER GEOGRAPHIC MARKET IS NOT A MATERIAL CHANGE BUT MERELY COMPORTS WITH THE COMMISSION’S STANDARD FORBEARANCE ANALYSIS**

Verizon further argues that the Rhode Island petition is different from the Providence MSA petition because the instant petition seeks “more narrow – geographic relief” by focusing on the state of Rhode Island rather than the entire Providence MSA.<sup>12</sup> Verizon implies – disingenuously – that the Commission has previously evaluated and decided the Providence MSA forbearance request on the basis of entire Metropolitan Statistical Areas (“MSAs”)<sup>13</sup> and, thus, the Rhode Island petition is “different” because it seeks forbearance in a smaller geographic market. The fact is that the Commission consistently has evaluated and decided requests for forbearance from Section 251(c)(3) unbundling requirements on a narrowly-focused wire center basis, considering broader geographic implications in its overall Section 10 public interest analysis.<sup>14</sup> Verizon’s attempts to gerrymander the geographic scope of its “new” petition is a transparent and futile attempt to tilt the scales in its favor that, like its predecessor, cannot withstand meaningful scrutiny.

---

<sup>11</sup> No “bright-line” test was created in the Providence MSA forbearance proceeding. Because that was not a rulemaking proceeding it would have been inappropriate for the Commission to create a test of general applicability when evaluating the forbearance request.

<sup>12</sup> *Rhode Island Petition*, at 4.

<sup>13</sup> In the case of the *Anchorage Forbearance Order*, the overall geographic market under consideration was the incumbent local exchange carrier’s (“ILEC”) entire study area. *In re Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, 22 FCC Rcd 1958, ¶ 15 (2007) (“*Anchorage Forbearance Order*”).

<sup>14</sup> See, e.g., *Anchorage Forbearance Order*, at ¶¶ 14, 16; *Omaha Forbearance Order*, ¶61.

As noted in comments filed in response to the Rhode Island petition and evidenced in the *Omaha* and *Anchorage* forbearance orders, the Commission consistently has assessed whether forbearance from unbundling obligations is warranted on a wire center basis.<sup>15</sup> In the *Omaha Forbearance Order*, the Commission granted the requested forbearance from loop and transport unbundling obligations in only 9 of 24 wire centers after finding that there was sufficient facilities-based competition in those wire centers to warrant forbearance.<sup>16</sup> Similarly, the Commission granted ACS of Anchorage's request for forbearance from loop and transport unbundling requirements in only 5 of 11 wire centers in the Anchorage, Alaska study area.<sup>17</sup> In that order, the Commission explained it was using the same forbearance analytical framework used in the Omaha forbearance proceeding, which involved "evaluat[ing] the extent to which competitive facilities can and will be used to provide competitive services in *each wire center service are where relief is sought*."<sup>18</sup>

Verizon's submissions in the *6-MSA* forbearance proceeding belie its claim that the Rhode Island petition is different from the Providence MSA petition because it presents data specific to Rhode Island "rather than together with parts of Massachusetts that, in combination, form the Providence MSA."<sup>19</sup> In the *6-MSA* proceeding, Verizon not only provided data for the entire Providence MSA, it also provided information specific to the state of Rhode Island.<sup>20</sup>

---

<sup>15</sup> See, e.g., Comments of Cox Communications, Inc., WC Docket No. 08-24, at 2 (filed Mar. 28, 2008) (stating "[Verizon's] argument is inconsistent with prior FCC precedent, which clearly establishes the wire center as the appropriate geographic unit for analysis").

<sup>16</sup> *Omaha Forbearance Order*, at ¶ 59.

<sup>17</sup> *Anchorage Forbearance Order*, at ¶ 2.

<sup>18</sup> *Anchorage Forbearance Order*, at ¶ 9 (emphasis added).

<sup>19</sup> Verizon Opposition, at 4.

<sup>20</sup> See Confidential Attachment A to Letter from Evan T. Leo, Counsel to Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-172 (filed Dec. 3, 2007).

Verizon's prior filings in the *6-MSA* forbearance proceeding not only prove that there is no material difference between the geographic market data provided in the Rhode Island and Providence MSA petitions but also show that Verizon was aware of and responded to the Commission's established forbearance review framework.

### **III. VERIZON'S PETITION IS ACTUALLY AN UNTIMELY REQUEST FOR RECONSIDERATION OF THE *6-MSA ORDER***

Verizon attempts to justify Commission consideration of the Rhode Island petition on the ground that the petition "addresses other concerns that were raised with Verizon's data in the prior proceeding."<sup>21</sup> In particular, Verizon claims the Rhode Island petition is different despite providing the same type of data (*e.g.*, data purporting to show cable competition and decreases in Verizon residential access lines) in a slightly different format. Yet there is no material difference between the nature of the data provided with the *6-MSA* petitions and the data provided with the Rhode Island petition. As Cox stated in its comments, "Verizon's new Rhode Island Petition is a repackaged version of its forbearance request for the Providence MSA that the Commission summarily rejected less than four months ago."<sup>22</sup> Sprint Nextel concurs that "Verizon has failed to present any new material evidence that should cause the Commission to depart from its prior precedent and reach a different conclusion in this matter."<sup>23</sup>

The final "difference" between the Rhode Island petition and the Providence MSA petition suggested by Verizon – the submission of data on a rate-center basis instead of a wire-center basis<sup>24</sup> – is nothing more than a poorly-disguised request for reconsideration of the *6-MSA Order*. Verizon is well aware that the Commission has consistently evaluated Section

---

<sup>21</sup> Verizon Opposition, at 4-5.

<sup>22</sup> Cox Comments, at 1.

<sup>23</sup> Sprint Nextel Comments, at 3.

<sup>24</sup> Verizon Opposition, at 5.

251(c)(3) forbearance requests on a wire center basis.<sup>25</sup> Verizon is now seeking application of a different standard. As Sprint Nextel noted, “Verizon’s attempt to have the Commission apply a different analysis to the same facts it submitted in the Providence MSA petition . . . amounts to a request for reconsideration of the Commission’s previously-established forbearance tests.”<sup>26</sup> Similarly, COMPTTEL noted that Verizon’s Rhode Island petition “merely reargues issues that were decided by the Commission in the *Verizon 6 MSA Order*, [and] is tantamount to a late filed, procedurally improper petition for reconsideration.”<sup>27</sup>

---

<sup>25</sup> See, e.g., *Rhode Island Petition*, at 4, n.7 (“With respect to unbundling regulation, the Commission has granted forbearance on a wire-center basis. In Anchorage, the Commission considered the wire centers within the Anchorage study area, while in Omaha the Commission considered the wire centers within the Omaha MSA. . . . As discussed below, the Commission should analyze rate centers in place of wire centers here.”) (internal citations omitted).

<sup>26</sup> Sprint Nextel Comments, at 3.

<sup>27</sup> COMPTTEL Comments in Support of Motion to Dismiss, at 1.

#### IV. CONCLUSION

As discussed above, Verizon has not provided any reasonable justification for Commission review of its Rhode Island petition. The Rhode Island petition is not materially different from the Providence MSA petition which was denied in its entirety by the Commission just a few months ago. For the foregoing reasons, the Commission should grant the Movants' Motion to Dismiss or, in the Alternative, Deny Petition for Forbearance.

Respectfully Submitted,

By: Andrew Lipman (JL)

Andrew D. Lipman  
Russell M. Blau  
Patrick J. Donovan  
Philip J. Macres  
BINGHAM MCCUTCHEN LLP  
2020 K Street, N.W.  
Washington, D.C. 20006

*Counsel for Access Point, Inc., Alpheus Communications, L.P., ATX Communications, Inc., Bridgecom Intl, Inc., Broadview Networks, Inc., Cavalier Telephone Corp., CIMCO Communications, Inc., CloseCall America, Inc., CP Telecom, Inc., Deltacom, Inc., DSLnet Communications, LLC, Globalcom, Inc., Lightyear Network Solutions, LL C, Matrix Business Technologies, McLeod USA Telecom Services, Inc., MegaPath, Inc., PAETEC Holding Corp., Penn Telecom, Inc., RCN Inc. Telecom Services, Inc., RNK Inc., segTEL, Inc., Talk America Holdings, Inc., TDSMetrocom, LLC, and U.S. Telepacific Corp. and Mpower Communications Corp., both d/b/a Telepacific Communications*

By: Genevieve Morelli

Brad. E. Mutschelknaus  
Genevieve Morelli  
Denise N. Smith  
Kelley Drye & Warren LLP  
3050 K Street, N.W.  
Suite 400  
Washington, D.C. 20007

*Counsel to Covad Communications Group, Nuvox Communications and XO Communications, LLC*

April 14, 2008



**CERTIFICATE OF SERVICE**

I, Tara Mahoney, hereby certify that on this 14<sup>th</sup> day of March, 2008, copies of the foregoing Reply to Verizon's Opposition to Motion to Dismiss Or, In The Alternative, Deny Petition for Forbearance were served upon each of the following by the methods indicated below.

Jeremy Miller\*  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554  
Jeremy.Miller@fcc.gov

Best Copy and Printing, Inc.\*  
Portals II  
445 12<sup>th</sup> Street, SW  
Room CY-B402  
Washington, DC 20554  
fcc@bcpiweb.com

Tim Stelzig\*  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554  
Tim.Stelzig@fcc.gov

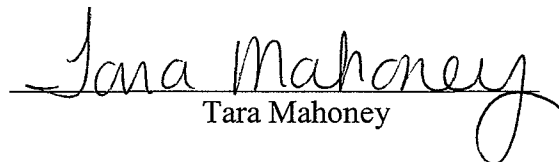
Sherry A. Ingram+  
Assistant General Counsel  
Verizon  
1515 North Courthouse Road  
Arlington, VA 22201

Denise Coca\*  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554  
Denise.Coca@fcc.gov

Evan Leo+  
Kellogg, Huber, Hansen, Todd, Evans &  
Figel  
1615 M Street, NW  
Washington, DC 20036  
*Counsel to Verizon*

Competition Policy Division\*  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554  
CPDcopies@fcc.gov

\*via email  
+via first class mail

  
Tara Mahoney